





## *Report to the Auburn City Council*

Action Item

Agenda Item No.

**2**
  
 City Manager Approval

**To:** Mayor and City Council Members  
**From:** Bernie Schroeder, Director of Public Works   
**By:** Carie Huff, P.E., Associate Civil Engineer   
**Date:** February 24, 2014  
**Subject:** Nevada Street Pedestrian and Bicycle Facilities Project Professional Services Agreement

### The Issue

Shall the City Council approve a consultant agreement with Mark Thomas & Company, Inc. for preliminary engineering and environmental services for the Nevada Street Pedestrian and Bicycle Facilities Project?

### Conclusion and Recommendation

Staff recommends that the City Council, by **RESOLUTION**, authorize the Director of Public Works to execute a professional services agreement with Mark Thomas & Company, Inc. for preliminary engineering and environmental services for the Nevada Street Pedestrian and Bicycle Facilities project subject to approval of form by the City Attorney in an amount not to exceed \$73,007.

### Background

The City of Auburn received a Congestion Mitigation and Air Quality Improvement Program grant through Placer County Transportation Planning Agency in May 2010 to be used on sidewalk and bicycle lanes along Nevada Street from Placer Street to Fulweiler Avenue. The project is split between preliminary engineering at \$65,000 with a local match of \$8,420 and \$586,387 for construction with a local match of \$150,193. The local match and any additional monies required will be funded by the Local Transportation Fund.

The City has been authorized through the California Department of Transportation to proceed with preliminary engineering for the Nevada Street Pedestrian and Bicycle Facilities Project in the amount of \$73,420. In November of 2013, the City released a Request for Proposals from consultants to complete the preliminary engineering phase of the project. The City received six proposals from qualified consultants and oral interviews were conducted with the top three firms by City staff and the City Engineer. It was determined that Mark Thomas & Company, Inc. is best qualified for the project based on recent experience with similar federal aid projects and familiarity with the project area.

Mark Thomas & Company, Inc. is proposing the preliminary engineering be separated into two phases; the first phase will include survey and base mapping, utility research, environmental services and the creation of three conceptual designs with cost estimates while the second phase will include supplemental topography, right-of-way engineering and final plans and specifications. The three conceptual designs are intended to provide positive and negative design considerations for separated sidewalk located along the east side of Nevada Street, the west side and a hybrid of the east and west sides of Nevada Street. Mark Thomas & Company, Inc. submitted a cost for Phase 1 of the preliminary engineering in the amount of \$73,007 and the scope of work includes survey and base mapping, utility research, environmental services and conceptual design of three alternatives. City staff anticipates bringing conceptual design alternatives to City Council in

May for feedback. Once the design alternative is selected, staff will request funds for Phase 2 of the preliminary engineering phase to complete the final plans and specifications and the right-of-way engineering.

**Alternatives Available to Council; Implications of Alternatives**

1. Accept Staff Recommendation.
2. Take no action.

**Fiscal Impact**

Funding for this project is primarily from federal funds that are administered by the State of California Department of Transportation under the Congestion Mitigation and Air Quality Improvement Program, in the amount of \$65,000. The matching funds required by the grant are to be provided by the Local Transportation Fund approved in the 2013/14 Operating Budget, in the amount of \$8,420. Mark Thomas & Company, Inc. has submitted a cost of \$73,007 for Phase 1 of the preliminary engineering which is \$413 less than the authorized amount. Additional funding will be required to cover the cost of Phase 2 of preliminary engineering and staff time for Phase I and Phase 2 of preliminary engineering (anticipated to be \$15,000). Staff anticipates shifting funds from the construction phase of the project (\$586,387 with a local match of \$150,193) and utilizing Local Transportation Funds. Staff will also pursue other funding opportunities through the Active Transportation Program to cover the remaining cost of the project.

Attachments: Professional Services Agreement – Mark Thomas & Company, Inc.  
Resolution

*Nevada Street Pedestrian and Bicycle Facilities*  
**PROFESSIONAL SERVICES AGREEMENT**  
**Providing Payment of Prevailing Wages**  
(City of Auburn/Mark Thomas & Company, Inc.)

**1. IDENTIFICATION**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into by and between the City of Auburn a California municipal corporation ("City") and Mark Thomas & Company, Inc. a California corporation ("Consultant").

**2. RECITALS**

- 2.1 City has determined that it requires the following professional services from a consultant: preliminary engineering and environmental services for the Nevada Street Pedestrian and Bicycle Facility project.
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

**3. DEFINITIONS**

- 3.1 "Scope of Services": Such professional services as are set forth in Consultant's February 14, 2014 proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2 "Approved Fee Schedule": Such compensation rates as are set forth in Consultant's February 18, 2014 fee schedule to City attached hereto as Exhibit B and incorporated herein by this reference.
- 3.3 "Commencement Date": February 25, 2014.
- 3.4 "Expiration Date": August 25, 2015.

**4. TERM**

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 17 ("Termination") below.

**5. CONSULTANT'S SERVICES**

- 5.1 Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of Seventy Three Thousand and Seven Dollars (\$73,007.00) unless specifically approved in advance and in writing by City.
- 5.2 Consultant shall obtain a City business license prior to commencing performance under this Agreement.
- 5.3 Consultant shall perform all work to the highest standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.4 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.
- 5.5 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Matt Brogan shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.

**6. COMPENSATION**

- 6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept payment in accordance with the

Approved Fee Schedule in full satisfaction for such services.

- 6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. City shall not withhold applicable taxes or other payroll deductions from payments made to Consultant except as otherwise required by law.
- 6.3 Payments for any services requested by City and not included in the Scope of Services shall be made to Consultant by City on a time-and-materials basis pursuant to the Approved Fee Schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies City in writing of an increase in that fee schedule or to compensation other than in compliance with this Agreement, including, without limitation, Section 5.1 above.
- 6.4 To the extent applicable, this Agreement is further subject to the provisions of Article 1.7 (commencing at § 20104.50) of Division 2, Part 3 of the Public Contract Code regarding prompt payment of contractors by local governments. Article 1.7 mandates certain procedures for the payment of undisputed and properly submitted payment requests within 30 days after receipt, for the review of payment requests, for notice to the contractor of improper payment requests, and provides for the payment of interest on progress payment requests which are not timely made in accordance with this Article. This Agreement hereby incorporates the provisions of Article 1.7 as though fully set forth herein.
- 6.5 To the extent applicable, at any time during the term of the Agreement, the Consultant may at its own expense substitute securities equivalent to the amount withheld as retention (or the retained percentage) in accordance with Public Contract Code § 22300. At the request and expense of the consultant, securities equivalent to the amount withheld shall be deposited with the City, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay those moneys to the City. Upon satisfactory completion of the contract, the securities shall be returned to the Consultant.

## **7. OWNERSHIP OF WRITTEN PRODUCTS**

All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon use or dissemination by City. Consultant may take and retain copies of such written products as desired, but shall not seek to copyright such written products.

**8. RELATIONSHIP OF PARTIES**

Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

Under no circumstances shall Consultant look to the City as his employer. Consultant shall not be entitled to any benefits. City makes no representation as to the effect of this independent contractor relationship on Consultant's previously earned PERS retirement benefits, and Consultant specifically assumes the responsibility for making such a determination. Consultant shall be responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation.

**9. CONFIDENTIALITY**

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

**10. INDEMNIFICATION**

10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, taxes, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the parties intend the provisions of this indemnity provision to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.

10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and when the City requests with respect to a claim provide a deposit for the defense of, and defend City, its officers, agents, employees and volunteers from and against any and all claims, losses, costs and expenses for any damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, and injury to any property arising out of or in connection with Consultant's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or any of its officers, employees,

servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole active negligence or willful misconduct of the City. Such costs and expenses shall include reasonable attorneys' fees due to counsel of City's choice, expert fees and all other expenses of litigation. Consultant shall not be entitled to any refund of attorneys' fees, defense costs or expenses in the event that it is adjudicated to have been non-negligent.

- 10.3 City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 10 and any amount due City from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.4 The obligations of Consultant under this Section 10 are not limited by the provisions of any workers' compensation or similar statute. Consultant expressly waives its statutory immunity under such statutes as to City, its officers, agents, employees and volunteers.
- 10.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others, Consultant agrees to indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims, losses, costs and expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.
- 10.6 City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply whether or not any insurance policies apply to a claim, demand, damage, liability, loss, cost or expense.

## **11. INSURANCE**

- 11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in

full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:

- 11.1.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.
- 11.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.
- 11.1.3 Worker's Compensation insurance if and as required by the laws of the State of California.
- 11.1.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).
- 11.2 Consultant shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.
- 11.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 11.4 Consultant agrees that if it does not keep the insurance coverages required by this Agreement in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium(s) thereon at Consultant's expense.
- 11.5 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the required coverages are in effect and except for professional liability and workers compensation naming the City and its officers, employees, agents and volunteers as additional insureds. Prior to commencement of work under this Agreement, Consultant shall file such certificate(s) with City's Risk Manager.
- 11.6 Consultant shall provide proof that policies of insurance required by this Agreement expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.



- 11.7 The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming City and its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 11.8 The insurance provided by Consultant shall be primary to any other coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.
- 11.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.
- 11.10 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond in the amount of the deductible or self-insured retention to guarantee payment of losses and expenses.
- 11.11 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

## **12. MUTUAL COOPERATION**

- 12.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.
- 12.2 If any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

## **13. RECORDS AND INSPECTIONS**

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during

normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

**14. PERMITS AND APPROVALS**

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.

**15. NOTICES**

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

**If to City**

City of Auburn  
1225 Lincoln Way  
Auburn CA 95603  
Telephone: (530) 823-4211  
Facsimile: (530) 823-4216

**If to Consultant:**

*Mark Thomas & Company, Inc.*  
7300 Folsom Boulevard, Suite 203  
Sacramento, CA 95826  
Telephone: (916) 381-9100  
Facsimile: (916) 381-9180

**With courtesy copy to:**

Michael G. Colantuono, Esq.  
Auburn City Attorney  
Colantuono & Levin, P.C.  
11364 Pleasant Valley Road  
Penn Valley, CA 95946  
Telephone: (530) 432-7357  
Facsimile: (530) 432-7356

**16. SURVIVING COVENANTS**

The parties agree that the covenants contained in Section 9, Section 10, Paragraph 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

**17. TERMINATION**

- 17.1. City may terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant may terminate this Agreement for any reason on thirty calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.
- 17.2. If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement as provided in Section 5.1 above and as otherwise provided in this Agreement.

**18. GENERAL PROVISIONS**

- 18.1. Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 18.2. In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability, medical condition or any other unlawful basis.
- 18.3. The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph shall govern construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular and vice versa, in any place or places herein in which the context requires such substitution(s).
- 18.4. The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing signed by one authorized to bind the party to be charged with the waiver.
- 18.5. Consultant shall not be liable for any failure to perform if Consultant presents

acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.

- 18.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance from the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any or all of such other rights, powers or remedies. If legal action shall be necessary to enforce any term, covenant or condition contained in this Agreement, the party prevailing in such action, whether or not reduced to judgment, shall be entitled to its reasonable court costs, including any accountants' and attorneys' fees expended in the action. The venue for any litigation shall be Placer County, California and Consultant hereby consents to jurisdiction in Placer County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 18.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to the extent necessary to, cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 18.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the provisions of this Agreement and those of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed on behalf of the City and Consultant.
- 18.10 To the extent applicable, this Agreement is further subject to the provisions of Article 1.5 (commencing at Section 20104) of Division 2, Part 3 of the Public Contract Code regarding the resolution of public works claims of less than \$375,000. Article 1.5 mandates certain procedures for the filing of claims and

supporting documentation by the contractor, for the response to such claims by the contracting public agency, for a mandatory meet and confer conference upon the request of the contractor, for mandatory nonbinding mediation in the event litigation is commenced, and for mandatory judicial arbitration if the parties fail to resolve the dispute through mediation. This Agreement hereby incorporates the provisions of Article 1.5 as though fully set forth herein.

- 18.11 This Agreement is further subject to the provisions of California Public Contracts Code § 6109 which prohibits the Consultant from performing work on this project with a subcontractor who is ineligible to perform work on the project pursuant to §§ 1777.1 or 1777.7 of the Labor Code.
- 18.12 Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of City. In addition, pursuant to Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under the Agreement.

19 **PREVAILING WAGES**

- 19.1 To the extent that the estimated amount of this Agreement exceeds \$1,000, this Agreement is subject to prevailing wage law, including, but not limited to, the following:
- 19.1.1 The Consultant shall pay the prevailing wage rates for all work performed under the Agreement. When any craft or classification is omitted from the general prevailing wage determinations, the Consultant shall pay the wage rate of the craft or classification most closely related to the omitted classification. The Consultant shall forfeit as a penalty to City \$50.00 or any greater penalty provided in the Labor Code for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates for any work done under the Agreement employed in the execution of the work by Consultant or by any subcontractor of Consultant in violation of the provisions of the Labor Code. In addition, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which

each worker was paid less than the prevailing wage rate shall be paid to each worker by the Consultant.

19.1.2 Consultant shall comply with the provisions of Labor Code § 1777.5 concerning the employment of apprentices on public works projects, and further agrees that Consultant is responsible for compliance with § 1777.5 by all of its subcontractors.

19.1.3 Pursuant to Labor Code § 1776, Consultant and any subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Consultant in connection with this Agreement. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following: (1) The information contained in the payroll record is true and correct; and (2) The employer has complied with the requirements of Labor Code §§ 1811, and 1815 for any work performed by his or her employees on the public works project. The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours as required by Labor Code § 1776.

19.2 To the extent that the estimated amount of this Agreement exceeds \$1,000, this Agreement is further subject to 8-hour work day and wage and hour penalty law, including, but not limited to, Labor Code §§ 1810 and 1813, as well as California nondiscrimination laws, as follows:

19.2.1 Consultant shall strictly adhere to the provisions of the Labor Code regarding the 8-hour day and the 40-hour week, overtime, Saturday, Sunday and holiday work and nondiscrimination on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex or sexual orientation, except as provided in Government Code § 12940. Pursuant to the Labor Code, eight hours' labor shall constitute a legal day's work. Work performed by Consultant's employees in excess of eight hours per day, and 40 hours during any one week, must include compensation for all hours worked in excess of eight hours per day, or 40 hours during any one week, at not less than one and one-half times the basic rate of pay. Consultant shall forfeit as a penalty to City \$25.00 or any greater penalty set forth in the Labor Code for each worker employed in the execution of the work by Consultant or by any Subcontractor of Consultant, for each calendar day during which

Professional Services Agreement  
City of Auburn / Mark Thomas & Company, Inc.

such worker is required or permitted to the work more than eight hours in one calendar day or more than 40 hours in any one calendar week in violation of the Labor Code.

- 19.3 Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of City. In addition, pursuant to Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under the Agreement.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

"City"  
City of Auburn

By \_\_\_\_\_

"Consultant"  
Mark Thomas & Company, Inc.

By:  \_\_\_\_\_

Name, Level of Officer e.g., Vice President

Date: \_\_\_\_\_

Date: 2-18-14

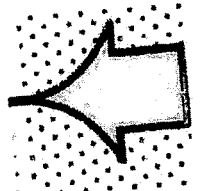
By:  \_\_\_\_\_

Name, Level of Officer e.g., Vice President

Date: 2-18-14

Attest:

By \_\_\_\_\_  
Deputy City Clerk



**Professional Services Agreement  
City of Auburn / Mark Thomas & Company, Inc.**

Date: \_\_\_\_\_

Approved as to form:

By \_\_\_\_\_  
Michael G. Colantuono, City Attorney

Date: \_\_\_\_\_



**EXHIBIT A**  
**SCOPE OF WORK**

**CITY OF ALBUQUERQUE - MONROE STREET SIDEWALK - Paving**

## **SCOPE OF WORK: NEVADA STREET SIDEWALK PROJECT – PHASE 1**

The MTCO Team will provide professional services for the City of Auburn to complete the environmental documentation and preliminary design for the Nevada Street Sidewalk Project. The purpose of this project is to construct Class II bike lanes and a sidewalk along Nevada Street between Placer Street and Fulweiler Avenue. In the performance of this scope of services, MTCO will diligently perform this scope of work and will be responsible for items of work under this contract to the extent that any issues arising from the performance of these services are within our reasonable control and that MTCO's obligation to indemnify and defend are limited to the extent actually caused by MTCO in the performance of this scope of work.

### **1.0 PROJECT MANAGEMENT**

#### **1.1 ATTEND MEETINGS**

The project will require communication and coordination with City staff and public outreach. MTCO will conduct two (2) design related meetings with the City. MTCO will attend an initial meeting with City staff to gain a complete understanding of the existing facility and future needs. A Concept Meeting is anticipated after the preparation of preliminary plans to allow the City to review and provide buy-off of the design concept. MTCO will present the proposed plans at a City Council meeting, as required, and will also attend up to six (6) additional meetings.

#### **1.2 PROJECT MANAGEMENT**

For this project to be successful the team will need to correspond with the Project Manager and appropriate City staff throughout the development of the environmental document and design. We recommend having bi-weekly conference calls to review action items and decision resolutions. MTCO shall provide management of subconsultants in the performance of their work. Management activities shall also include development and maintenance of a CPM design schedule and a monthly progress report. The schedule and billings shall be submitted in the form and in sufficient detail to track the project status and contract expenditures as outlined by the City at the beginning of the project.

#### **1.3 QUALITY ASSURANCE/QUALITY CONTROL (QA/QC)**

The MTCO Quality Control plan consists of established procedures for performing the work (which are reassessed with each project), including methods for design calculations, establishing appropriate levels of design development, identification of required plan checks, design checklists, and methods of project documentation. The elements of this plan will be incorporated into the project.

#### ***Task 1 Deliverables:***

- Meeting agendas and meeting minutes (4 total)

### **2.0 BASE MAPPING AND SURVEYS**

#### **2.1 CONTROL SURVEYS**

MTCO will set horizontal and vertical control points for the project. The horizontal and vertical datums will be as requested by the City. Six (6) flight crosses will be set for the survey. Total Station traverses, fast-static GPS, RTK GPS and/or digital levels will be used to accurately locate the on-site control.

#### **2.2 BASE MAP**

MTCO will acquire a photogrammetric mapping at a scale of 1"=50' and including 1' contour interval. Mapping will meet ASPRS standards of accuracy for the mapping scale.

MTCO will perform one day of field survey to collect topographic information at areas critical to the 30% design and alternative selection. These surveys will be determined by the design engineer based on preliminary design.

The supplemental survey will be processed and points will be overlaid on the mapping.

Survey will be provided in AutoCAD format for use as a base layer to the engineering plans. No sheets are anticipated to be delivered.

### **2.3 RECORD RIGHT OF WAY DELINEATION**

In support of 30% design, MTCO will acquire record mapping and railroad maps for the project site. This mapping will be compiled and approximate right of way lines will be overlaid on the base map. This accuracy will allow for identification of impacts and approximation of right of way needs and costs for alternative selection.

### **2.4 UTILITY COORDINATION**

MTCO will initiate the "A/B/C" Utility Coordination Process which will include: identifying utility conflicts, facilitating relocation designs and obtaining commitments for relocation schedules. This information will be compiled into base mapping and will be utilized as we move into final design.

### **Task 2 Deliverables:**

- Topographic survey in AutoCAD format
- Approximate right of way lines in AutoCAD format
- Utility Coordination and Correspondence

## **3.0 ENVIRONMENTAL DOCUMENTATION**

AWE will work with MTCO and City staff to streamline the environmental review process for the project. AWE will also work with Caltrans environmental staff to process the project.

### **3.1 PREPARE PRELIMINARY ENVIRONMENTAL STUDY (PES) FORM AND ATTEND FIELD REVIEW MEETING**

AWE will complete a preliminary environmental study (PES) form for submittal to Caltrans in accordance with current Caltrans procedures and using their standard PES form. Working with Project engineers, AWE will draft a detailed Project Description, complete required database searches, and incorporate existing information into the PES. The City will review the Project Description and AWE will incorporate revisions as needed. The draft Project Description and administrative draft PES form will be submitted to Caltrans prior to the Field Review meeting. AWE staff will attend one Field Review meeting with the Project engineers, the City, and Caltrans Local Assistance representatives to verify the scope of work and develop a mutual understanding of the issues and potential impacts of the Project. Based on results of the Field Review, AWE will finalize the Project Description and update the PES form for the City to transmit to Caltrans for their signature.

### **3.2 BIOLOGICAL CONSTRAINTS AND PERMIT REVIEW TECHNICAL MEMORANDUM**

Caltrans District 3 Local Assistance staff will determine whether the project will require a Biological Resources Technical Memorandum or Natural Environment Study. Based on our review of the project area and experience with similar projects, we anticipate a Biological Resources Technical Memorandum will be required. AWE will prepare a technical memorandum to assess the potential jurisdiction of roadside ditches under Sections 401 and 404 of the Clean Water Act, as administered by the U. S. Army Corps of Engineers and Regional Water Quality Control Board. This technical memo will be based on a field visit and will document the location and condition of potential wetland features and other sensitive biological resources, including nesting birds. The biological resources technical memorandum will incorporate results of the arborist study (see below) and identify avoidance and minimization measure to offset project effects on biological resources, including recommendations for tree replacement and best management practices (BMPs) to minimize project impacts on water quality. AWE will work with City staff and Project engineers to identify any permits required for the project and resource constraints to project design.

### **3.3 ARBORIST REPORT/TREE INVENTORY**

AWE will coordinate with Acorn Arboricultural Services, Inc. to conduct a tree inventory of the project site. The arborist will identify all protected trees located within ten feet of the roadway edge on the east and west sides of Nevada Street, between Fulweiler Street and Placer Street. The arborist will tag all trees with numbered aluminum

tags, and will collect information as to the species, health, and size of each specimen. This information will be summarized in an arborist report/tree inventory report per the City of Auburn Tree Protection Ordinance requirements. Following the field tagging of trees, the MTCO team surveyor will survey tree locations and provide mapping information to AWE to assist in the assessment of tree removal impacts and determine required mitigation consistent with the City's Tree Ordinance.

### 3.4 CULTURAL RESOURCE REPORT

During scoping (PES review), Caltrans Professional Qualified Staff (PQS) will review the project to determine whether to work requires preparation of cultural resources technical reports or whether it qualifies as a screened undertaking under Caltrans' regulatory responsibilities under Section 106 of the National Historic Preservation Act (NHPA: 36 CFR Part 800) as delegated on behalf of the Federal Highway Administration in accordance with the January 1, 2004 (as amended January 2014), Programmatic Agreement Among the Federal Highway Administration, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and the California Department of Transportation Regarding Compliance with Section 106 of the National Historic Preservation Act, as it Pertains to the Administration of the Federal-Aid Highway Program in California (PA). This scope of work assumes that Caltrans will require preparation of cultural resources technical reports, as described below.

For the cultural resources studies, AWE will draft an Area of Potential Effects (APE) map. The APE defines the scope of the study area for cultural resources. The archaeological APE will include all areas subject to ground-disturbance, including temporary construction and staging areas for the project. The City will submit the APE map to Caltrans for approval.

After APE map approval, AWE will request a records search including a review of site records, survey reports, National and California register listings, as well as other relevant documents from the North Central Information Center of the California Historical Resources Information System, administered by California State University, Sacramento. AWE will conduct all necessary consultation with the Native American Heritage Commission (NAHC) and all Native American groups/interested parties identified by the NAHC. Recent direction from Caltrans District 3 staff requires that all correspondence with Native American groups go through the Caltrans office, so AWE staff will prepare draft letters to be sent by Caltrans.

AWE will conduct a pedestrian survey of the archaeological APE. The survey will consist of visual inspection of 100% of the APE by AWE archaeologist Mary Bailey. Staff will record any undocumented resources; revisit and, if necessary, update any previously recorded resources in or immediately adjacent the APE; and use GPS equipment for precise locational mapping.

AWE will prepare an Archaeological Survey Report (ASR) compliant with Caltrans standards that summarizes the methods and results of the records search, Native American consultation, potential for buried resources, survey methods and results, and recommendations for treatment of resources within the APE. We assume that no sensitive cultural resources are found during the pedestrian survey and that Native American consultation will not require more than 8 hours of coordination with interested parties. AWE will also prepare the Historic Property Survey Report (HPSR) for the project. The HPSR summarizes results of the ASR and is transmitted to Caltrans with the ASR.

### 3.5 CEQA/NEPA COMPLIANCE DOCUMENTATION

Based on our understanding of the Project, the Project's location within a developed area, and limited potential for resource impacts, the appropriate environmental documentation for the Project is anticipated to be a a Categorical Exclusion (CE) in compliance with NEPA and a Categorical Exemption (CatEx) in compliance with CEQA.

Caltrans serves as the NEPA lead for local assistance projects. The Project appears to qualify for a NEPA CE under CFR 771.117(c)(3) construction of bicycle and pedestrian lanes, paths, and facilities, (6) installation of noise barriers, (7) landscaping, and (8) installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur. We assume that Caltrans will require no few technical studies for environmental review. Because the project would not require acquisition of right-of-way and sidewalk work would be limited in depth, we assume Caltrans will not require cultural resources technical reports. After review and approval of the PES form, the Caltrans District 3 environmental division will complete and sign a CE determination form as required by Caltrans' Local Assistance Procedures Manual. AWE staff

will coordinate with Caltrans staff and provide information as needed to complete the CE determination form. This scope assumes up to eight hours of AWE staff time to assist with NEPA compliance and coordinate with Caltrans.

The City will be the CEQA lead for the Project. It appears that the Project will qualify for a Class 1 CEQA Categorical Exemption (CatEx) (Section 15301, Existing Facilities) for minor alteration of existing public facilities involving negligible or no expansion of use beyond that which exists at the time of the Lead Agency's determination. Per the request for proposals, the City will prepare the CEQA compliance document and will be responsible for filing all CEQA notices and paying any associated fees. If requested, AWE can prepare a Notice of Exemption for the City's use under separate scope and cost.

### **Task 3 Deliverables:**

- Draft Project Description and PES Form (for Caltrans approval) – Electronic and 5 hard copies
- Biological Constraints and Permit Review Technical Memorandum – Electronic and 5 hard copies
- Electronic copy of draft ASR/HPSR for City review
- Draft ASR/HPSR for Caltrans review - electronic and 3 hard copies
- Final ASR/HPSR – electronic and 5 hard copies
- Record of correspondence with Caltrans District 3 staff

## **4.0 PROJECT DESIGN**

### **4.1 PRELIMINARY DESIGN (30% PLANS)**

MTCO will develop three (3) alternatives for the Nevada Street sidewalk and Class II bicycle lane improvements. These alternatives will be presented to the City for review during the initial Concept meeting. The 30% plans will be presented in "Geometric Approval Drawing" format at a scale of 1"=20'. The plans will consist of plan view and cross sections only; no profiles will be developed at this stage.

Issues to be considered during the preliminary design phase include:

- Identify which side of street sidewalk is best suited
- Incorporate accessibility design standards, including handicap ramps
- Greater than 5% existing roadway grade/ADA issues
- Steep embankment on east side of Nevada Street/some retaining wall needed
- Bus turnout for existing bus shelter
- Large trucks use receiving driveways on the west
- Overhead utilities on the west
- Drainage ditches on both sides
- Separated/elevated sidewalk serving residents on the south end of the project
- Wide southbound lane on south end of the project
- Old Auburn Cemetery close to roadway on the north end of project
- Limited parking for businesses on west

### **4.2 ESTIMATES**

MTCO will prepare an Engineer's Estimate for each alternative. Quantities will be generated using the design drawings and CADD software, and the item unit costs will be estimated by reviewing similar recent project bid summaries, Caltrans 2010 Contract Cost Data and the California Highway Construction Cost Index information.

### **Task 4 Deliverables:**

- Preliminary (30%) Design Submittal for three (3) alternatives
- 30% Engineer's Estimates for three (3) alternatives

## **ASSUMPTIONS:**

This scope of work has been prepared with the following assumptions:

- Potholing of utilities will not be required.
- Retaining wall designs will consist of Caltrans Standard Plan walls and no specialty designs will be required.
- Title Reports will be provided by the City.
- No traffic control will be necessary.
- City will provide all access and permits.
- Access onto Caltrans access control is not necessary.
- No monuments will be set or maps filed
- A Biological Resources Technical Memorandum will be sufficient to address potential effects of the proposed project on biological resources.
- No protocol-level special-status species surveys will be required, and no consultation with U.S. Fish and Wildlife Service (USFWS) will be needed.
- Any impacts to jurisdictional features will be avoided and permits will not be required.
- Caltrans will not require a water quality technical memorandum. The Biological Resources Technical Memorandum will include BMPs to avoid and minimize water quality impacts, which should be sufficient to address any water quality concerns.
- An Initial Site Assessment and/or materials testing (e.g., ADL testing) will not be required for the project.
- An assessment of historic architecture (a Historic Resource Evaluation Report (HREER)) would not be required.
- The cultural resources scope of work presented here entails background research and inventory (Phase I) and assumes no sensitive cultural resources would be found. Because results of the archaeological surveys and investigations are not yet known, the scope does not include Extended Phase I identification efforts, Phase-II evaluation of archaeological resources for National Register eligibility, Phase-III data recovery, and consultation with the State Historic Preservation Officer (SHPO).
- The City will prepare the CEQA compliance document.
- The City will be responsible for paying any filing fees or permit fees associated with the project.

**EXHIBIT B**  
**APPROVED FEE SCHEDULE**



February 18, 2014

**EXHIBIT B**

**MARK THOMAS & COMPANY, INC.**

**CHARGE RATE SCHEDULE "O"**

**Expires August 31, 2014**

**HOURLY CHARGE RATES**

**PROFESSIONAL AND OFFICE**

Principal/Project Manager	\$290.00 per hour
Structural Manager	260.00 per hour
Engineering Manager IV	260.00 per hour
Engineering Manager III	225.00 per hour
Engineering Manager II	210.00 per hour
Engineering Manager I	185.00 per hour
Survey Manager	170.00 per hour
Engineer X	185.00 per hour
Engineer IX	175.00 per hour
Engineer VIII	165.00 per hour
Engineer VII	159.00 per hour
Engineer VI	146.00 per hour
Engineer V	133.00 per hour
Engineer IV	120.00 per hour
Engineer III	109.00 per hour
Engineer II	99.00 per hour
Engineer I	91.00 per hour
Engineer Technician/Inspector IV	115.00 per hour
Engineer Technician/Inspector III	105.00 per hour
Engineer Technician/Inspector II	95.00 per hour
Engineer Technician/Inspector I	80.00 per hour
Engineer/Survey Technician Assistant	60.00 per hour
Land Surveyor II	165.00 per hour
Land Surveyor I	136.00 per hour
Project Surveyor II	132.00 per hour
Project Surveyor I	121.00 per hour
Survey Technician	93.00 per hour
Construction Inspector	109.00 per hour
PR/Communications Manager	144.00 per hour
Technical Writer	98.00 per hour
Clerical/Typist II	77.00 per hour
Clerical/Typist I	62.00 per hour
Messenger	45.00 per hour

**FIELD**

Single Chief	\$108.00 per hour
Single Chainman	88.00 per hour
2 Person Field Party and Vehicle	226.00 per hour
3 Person Field Party and Vehicle	313.00 per hour

February 18, 2014

**SPECIAL SERVICES**

Expert Witness

\$375.00 per hour

Strategic Consulting (Principal)

\$375.00 per hour

**OTHER DIRECT COSTS**

Reimbursables including, but not limited to:  
Printing and Materials, Filing Fees, and  
Field Expenses

-Cost plus 5%

Outside Consultant Fees

-Cost plus 5%

## **NON-COLLUSION DECLARATION**

TO BE EXECUTED BY  
BIDDER AND SUBMITTED WITH BID

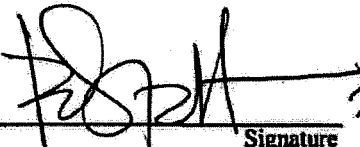
The undersigned declares:

I am the \_\_\_\_\_ of \_\_\_\_\_, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_ [date], at \_\_\_\_\_ [city], \_\_\_\_\_ [state]."

  
\_\_\_\_\_  
Signature      2-18-14  
DATE  
  
Robert A. Holmes  
\_\_\_\_\_  
Printed Name of Signatory

**WORKERS' COMPENSATION INSURANCE**  
**CERTIFICATE**

The Contractor shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

DATE: 2-18-14

Robert A. Hines  
(Contractor)  
By: [Signature]  
(Signature)  
President  
(Title)

Attest:

By: \_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Title)

RESOLUTION NO. 14-

RESOLUTION AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH  
MARK THOMAS & COMPANY, INC. FOR ENGINEERING AND ENVIRONMENTAL  
SERVICES FOR THE NEVADA STREET SIDEWALK AND BICYCLE LANE PROJECT

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THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

That the City Council does hereby authorize the Director of Public Works to  
execute a professional services agreement with Mark Thomas & Company, Inc.  
for preliminary engineering and environmental services for the Nevada Street  
Pedestrian and Bicycle Facilities Project subject to approval of form by the City  
Attorney in an amount not to exceed \$73,007.

DATED: February 24, 2014

\_\_\_\_\_  
Bridget Powers, Mayor

ATTEST:

\_\_\_\_\_  
Stephanie L. Snyder, City Clerk

I, Stephanie L. Snyder, City Clerk of the City of Auburn, hereby certify  
that the foregoing resolution was duly passed at a regular session meeting of  
the City Council of the City of Auburn held on the 24<sup>th</sup> day of February 2014  
by the following vote on roll call:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Stephanie L. Snyder, City Clerk

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